IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.10258 of 2003
& WPMP No.12295 of 2003

S.Unnikrishnan .. Petitioner

Vs.

1.The Deputy Commandant,
Central Industrial Security Force,
6th Reserve Battalion,
Arokonam.

2.The Commandant,
Central Industrial Security Force,
6th Reserve Battalion,
Arokonam. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the office memorandum No.V-15099/6RB/DISC/MISC/2003-2758 dated 28.03.2003 and the office memo No.V-15014/DISC/6th RB/Mess.Mis-app/2003-678 dated 21.01.2003 passed by the second respondent, quash the same and to direct the respondents to pay the salary from December, 2002 to till date to the petitioner.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.B.Ullasavelan, ACGSC.,

ORDER

(Order of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the Office Memorandum dated 21.01.2003 and 28.03.2003, the petitioner has filed the above writ petition to quash those orders and issue direction to the respondents to pay salary from December, 2002 to till date to the petitioner.

2. Heard the learned counsel for the petitioner as well as the respondents.

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3. In view of the order to be passed here under, we are of the view that it is unnecessary to refer all the factual matrix as stated in the affidavit and counter affidavit filed by the petitioner as well as the respondents. However, it is relevant to note the allegation of the respondents that the petitioner-Constable while performing duties in CISF, XIth Reserve Battalion Mess Writer for the period from August 2000 to October 2001 had been maintaining all the mess files, registers/records, in which he has made double recovery, excess recovery and caution money not accounted fully in the caution money recoveries and thereby he misappropriated a sum of Rs.30,997.35 of CISF XIth Reserve Battalion Mess Accounts. The charge memo further shows that act/omission on the part of the said Constable amounts to misconduct and dereliction of duty. It is brought to our notice that while steps are being taken for an enquiry, the Deputy Commandant, the first respondent herein issued another office memorandum dated 31.03.2003, in which the authority has decided to effect the recovery of misappropriated amount of Rs.30,997.35 from the petitioner, viz., Unnikrishnan without waiting for the outcome of the disciplinary proceedings pending against him. At that stage, the petitioner has filed the above writ petition and obtained an order of stay. The said interim order is in force all along.

4. Considering the fact that the enquiry has to be conducted with regard to Article of charge levelled against the petitioner, we are of the view that depending on the out come of the enquiry and the ultimate decision by the Disciplinary Authority, recovery proceeding can be resorted to. In this way, without going into the merits of the claim, we permit the respondents to complete the enquiry and take a decision one way or other and thereafter depending on the decision, the respondents are free to proceed further. Till such decision being taken by the Disciplinary Authority after full-fledged enquiry and the fact that this Court has granted stay as early as on 05.08.2003 and the same is in force all along, the recovery proceedings shall be kept in abeyance. As stated earlier, depending on the out come of the enquiry proceedings, the respondents are free to proceed further. The enquiry and the ultimate decision should be completed within a period of six months from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the Enquiry Officer.

5. The writ petition is disposed of on the above terms. No costs. Consequently, WPMP No.12295 of 2003 is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Deputy Commandant,
Central Industrial Security Force,
6th Reserve Battalion,
Arokonam.

2.The Commandant,
Central Industrial Security Force,
6th Reserve Battalion,
Arokonam.

+ 1 cc to Mr. M. Md. Imbrahim Ali, Advocate, SR No.60761

+ 1 cc to Mr. B. Ullasa Velan, Advocate, SR No.60704

W.P.No.10258 of 2003

SMV(CO)
SR/18.12.2006

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